than that enjoyed by Ameritech's retail operations. Id., ¶ 44.

5. Unbundled Local Transport/Unbundled Local Switching/UNE Platform

a. "Common Transport" is Neither a Network Element Nor a Checklist Requirement.

The criticisms of Ameritech's compliance with an entire group of checklist items — unbundled local transport, unbundled local switching ("ULS"), and the unbundled network element ("UNE") platform — depend entirely on a single, legally flawed premise: that "common transport" — undifferentiated minutes of use on Ameritech's network — is a network element.[23/] It is not.

First, the question of whether "common transport" is a network element has been pending before the Commission for over nine months and remains the subject of heated debate. Edwards Reply Aff., ¶ 44. It is perverse to assert that Ameritech has failed to comply with the checklist because it purportedly is not providing something that the Commission itself has never said must be provided. Indeed, the MPSC states that this issue "remains unresolved" while the industry awaits "clearer direction" from the Commission. MPSC, p. 40.

Second, "common transport" does not meet the Act's definition of a network element: "[A] facility or equipment used in the provision of a telecommunications service, [including] features, functions, and capabilities that are provided by means of such facility or equipment." Section 3(45). Under this definition, a network element is a discrete piece of the public switched network or a feature, function, or capability provided by such a discrete facility.[24/]

[23/] See DOJ, pp. 12-16; AT&T, pp. 9-12; MCI, pp. 27-28; MFS/WorldCom, pp. 20-29; CompTel, pp. 20-22.

[24/] See also Local Competition First Report and Order, ¶ 678 ("the network elements, as we have defined them, largely correspond to distinct network facilities"); Universal Service Order, CC Docket No. 96-45, FCC 97-157 (May 8, 1997) ¶¶ 150-51 (defining "facility" as "physical components of the telecommunications network"). The Eighth Circuit's recent decision in (continued...)

Commenters overlook this fundamental point, instead conflating unrestricted use of the network with the purchase of a "network element." See Falcone/Sherry Aff., ¶ 12.

Nor can "common transport" qualify as a UNE under the plain language of the checklist. The checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." Section 271(c)(2)(B)(v). Accordingly, the local transport required by the checklist must be able to stand on its own, separate from any other item, including switching. As defined by Ameritech's competitors, however, "common transport" cannot be provided separately from local and tandem switching. Rather, as Ameritech's network engineer explained and as Ameritech's competitors frankly admit, it must be combined with local and tandem switching to perform as Ameritech's competitors desire.[25/] This engineering fact precludes "common transport" from being unbundled from switching as mandated by the checklist, further confirming that "common transport" is not a network element under the Act.

Third, the structure of the Act and this Commission's regulations demonstrate that "common transport" — usage of the overall network — is a service and not a UNE. There are sharp regulatory distinctions between UNEs and resale services, and "common transport" has none of the core attributes of a UNE. Edwards Reply Aff., ¶¶ 57-65. Among the core UNE attributes that "common transport" lacks:

[24/](...continued)
Competitive Telecomm. Ass'n v. FCC, Docket No. 96-3604, slip op. at 7 (8th Cir. June 27, 1997) recognized that the "interconnection" required by the Act includes a "physical link" to the local network, and not transmission and routing; interconnection is how CLECs access UNEs, but there is no "physical link" to the so-called UNE platform.

[25/] See Kocher Reply Aff., ¶¶ 60-69; Bingaman Aff., Ex. 11, pp. 1-2 ("Local calls to or from LCI's local customers would be routed . . . onto the existing interoffice network, pursuant to the instructions in the switch"), Falcone/Sherry Aff., ¶ 12 (common transport "is routed dynamically through the tandem switch"); MFS, p. 21; Edwards Reply Aff. ¶ 53.

- UNEs are identifiable, physically discrete facilities or equipment "used in the provision of a telecommunications service." Section 3(45) (emphasis added). "Common transport," by contrast, encompasses the entire public switched network and is not "used in the provision of" a service — it is a service all by itself. Edwards Reply Aff., ¶¶ 63-64.

- UNEs subject the purchaser to the business risk of the facility being underutilized. Local Competition First Report and Order, ¶¶ 332, 334. "Common transport," by contrast, involves no designated facilities and would be billed based on minutes of use, placing the "purchaser" in the position of a reseller. Edwards Reply Aff., ¶¶ 59-60.

- Interoffice transport must be provided in a manner that enables CLECs to connect to collocated equipment. 47 C.F.R. § 51.319(d)(2)(iii). Because there is no physical demarcation point to "common transport" that would allow such connection, it cannot be the type of unbundled transport required by the Commission. Edwards Reply Aff., ¶ 61 & Att. 26, p. 26; cf. CompTel v. FCC, slip op. at 7 (interconnection refers to "a physical link").

- UNEs allow a CLEC to compete with innovative products and services without building a new network.[26/] Competitors seeking "common transport," however, need have no plans for innovative network design or configuration; they simply want to purchase end-to-end service — resale — at TELRIC prices. Edwards Reply Aff., ¶ 58 & Att. 26, p. 30. As defined by competitors, "common transport" requires the identical routing, trunk ports, trunks and tandem switches used by Ameritech. Id., ¶ 62. CLECs would provide no engineering, no routing, no designation of facilities. It is a classic bundled service.

Fourth, the "rebundling" language of Section 251(c)(3) does not magically transform a service into a network element. Thus, the assertion of the DOJ (pp. 14-15) and Ameritech's competitors (MFS/WorldCom, pp. 22-25; Falcone/Sherry Aff., ¶ 57) that "common transport" must be a network element because (i) Ameritech is required to combine network elements under Section 251(c)(3) and (ii) "common transport" is used in conjunction with network elements such as local and tandem switching not only begs the question, it is simply wrong. While Section 251(c)(3) certainly requires Ameritech to provide "unbundled network elements in a manner that allows the requesting carrier to combine such elements," each network element to be combined must, by definition, be capable of being provided on an unbundled basis in the first

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[26/] AT&T's claim that without "common transport" it would be forced to duplicate Ameritech's entire interoffice network (Falcone/Sherry Aff., ¶¶ 43-47) is specious from both a business and technical perspective. See Edwards Aff., ¶¶ 103-104.

instance. As defined by Ameritech's competitors, however, "common transport" cannot function without local and tandem switching. Consequently, "common transport" cannot be provided on a stand-alone basis and, therefore, does not qualify as an unbundled network element.

Fifth, "common transport" service is in fact available to CLECs today, as is the UNE platform (loops, ULS, and wholesale usage). Indeed, Ameritech is already furnishing "common transport," in the form of tariffed wholesale and access usage services, to AT&T and others every day.[27/] See Edwards Aff., ¶ 93. The real complaint of Ameritech's competitors is with the pricing of the service, not its availability. But this complaint was resolved by Congress when it set one pricing formula for resale and another for true "network elements."

In short, the language, structure, and policy of the Act and the Commission's regulations all demonstrate that "common transport," as defined by Ameritech's competitors, is not a network element but a service already provided by Ameritech. As such, it is not the type of unbundled transport required by the checklist.

b. Ameritech is Prepared to Provide "Common Transport" Along With ULS and the UNE Platform in the Manner Sought by Competing Providers, If Required to Do So.

Intimately related to these "common transport" issues are questions related to Ameritech's obligation — and, more importantly, its operational readiness — to provide "common transport" with ULS and the so-called UNE "platform" if ordered to do so. Ameritech is both committed and operationally ready to do whatever the law requires.

Many commenters maintain that Ameritech does not satisfy the checklist because it has refused to permit CLECs purchasing ULS with "common transport" (rather than with a dedicated trunk port) to collect access charges from toll providers. (E.g., DOJ, pp. 16-19; AT&T,

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[27/] Moreover, Ameritech's array of shared transport products — including Shared Company Transport — provides competitors with a variety of competitive options for serving local exchange customers. See Edwards Aff. ¶¶ 91-92, 99-103.

pp. 3-14; CompTel, pp. 18-19.) Given Ameritech's commitment to follow the law (whatever it may turn out to be), this argument is a red herring. The only relevant question for checklist purposes is whether Ameritech would be operationally ready to furnish and bill these items in a manner that permits CLECs to collect access revenues, if Ameritech were required to do so. As Mr. Kocher explains, the answer to that question is yes. Kocher Reply Aff., ¶¶ 70-84. Ameritech's local switches have the operational capacity to furnish ULS-common transport purchasers with precise daily usage information for originating calls. By contrast, it is not now technically feasible for Ameritech's local switches — or, to our knowledge, for the local switches of any other LEC — to provide precise usage data or originating carrier identity for terminating local usage, or to identify terminating access usage with the called number. Even AT&T has explicitly recognized these facts, which is why AT&T recently conceded that carriers must agree to "rough justice" settlement factors to account for terminating usage and access until permanent industry-wide solutions are developed. Id., ¶¶ 76-79, Sched. W. AT&T and Ameritech each have proposed a settlement mechanism, and Ameritech is ready to implement AT&T's flawed proposal, if legally required to do so, on an interim basis until a more appropriate settlement mechanism is ironed out. Id., ¶¶ 81-82.[28/]

Commenters also fault Ameritech for refusing to make available the UNE "platform" with "common transport" in the manner sought by Ameritech's competitors. (E.g., DOJ, pp. 19-21; AT&T, pp. 17-20.) Again, although Ameritech does not believe that the Act requires

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[28/] The DOJ appears to suggest (pp. 19-21) that Ameritech cannot satisfy the checklist until it "configure[s] its switches and support systems in a manner" that would permit the actual measurement of terminating access for ULS-common transport purchasers. As Ameritech and AT&T (both with substantial experience in telecommunications engineering) have recognized, it will take some time to develop such a long-term solution. Kocher Reply Aff., ¶¶ 73-82. Thus, even though Ameritech has committed to begin developing a long-term solution upon issuance of an effective Commission order requiring it to provide "common transport" (Kocher Aff., ¶ 78), the DOJ's apparent approach would misguidedly bar BOC entry into long distance for the foreseeable future.

it to provide this sort of "platform," it will do so if the law requires. What is important here is that Ameritech is operationally capable of furnishing the "platform" upon request. As Mr. Kocher describes, Ameritech and MCI recently completed a successful trial of the platform. Kocher Reply Aff., ¶¶ 113-114. Moreover, the initial trial recently completed by AT&T and Ameritech — developed under the auspices of the DOJ to test Ameritech's ordering and provisioning processes and ability to record call detail — convincingly demonstrated Ameritech's operational readiness to furnish the platform. Id., ¶¶ 85-95. AT&T and Ameritech are currently developing a protocol for an additional trial. Id., ¶¶ 96-101.[29/]

III. AMERITECH MICHIGAN AND ACI SATISFY THE REQUIREMENTS OF SECTION 272 OF THE 1996 ACT.

Ameritech has demonstrated how Ameritech Michigan and ACI, the long distance affiliate established by Ameritech Corporation, comply and will continue to comply with all of the requirements of Section 272 of the 1996 Act and this Commission's implementing regulations.[30/] This compliance ensures that ACI will "follow the same procedures as its competitors in order to gain access to a BOC's facilities," and implements the "flat prohibition against discrimination" ordered by the Commission. Non-Accounting Safeguards First Report and Order, ¶¶ 15, 16. Predictably, several commenters allege violations of Section 272. None of their arguments has merit.

Several commenters maintain that Ameritech Michigan has not made available the required information concerning its transactions with ACI. E.g., AT&T, pp. 37-39; CompTel,

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[29/] A number of commenters also take issue with other aspects of Ameritech's ULS product, as well as the MPSC's decision that requests for selective routing of OS/DA traffic for resale customers be handled through a bona fide request ("BFR"). (E.g., AT&T, pp. 14-16; MCI, p. 31.) Mr. Kocher rebuts these charges in his reply affidavit (¶¶ 3-38, 40).

[30/] Ameritech Br. 55-62; Early Aff. (ACI); Kriz Aff. (ALDIS); La Schiazza Aff. (Ameritech Michigan); Putnam Aff. (Ernst & Young); Shutter Aff. (Ameritech Corporation).

p. 28; TCG, pp. 31-32. The DOJ, while not endorsing this contention, states that it "raises questions about whether Ameritech has sufficiently documented the affiliated transactions to allow detection of discrimination, cross-subsidization, or any other anticompetitive behavior." DOJ, p. 28. Ameritech's competitors and the DOJ have no legitimate grounds for concern. As Messrs. Shutter and Earley explained in their earlier affidavit and reaffirm here, all transactions and contacts between the AOCs (including Ameritech Michigan) and ACI, in effect as of the AOCs' early implementation of the accounting rules adopted in the Accounting Safeguards Report, as well as all subsequent transactions, have been posted on Ameritech's Internet website. Earley Aff., ¶¶ 37-39; Shutter Aff., ¶ 10. Moreover, as Mr. Shutter describes, these listings disclose all of the information required by the Commission's rules — including how the rates for the services or products at issue are calculated. Shutter Reply Aff., ¶¶ 8-9.

Several commenters incorrectly contend that Ameritech Michigan and ACI have violated Section 272(b)(3) because neither has its own board of directors. E.g., WorldCom, pp. 45-46; Sprint, pp. 25-28; KMC Telecom, pp. 10-11. Section 272(b)(3) requires that ACI "have separate officers, directors and employees from the Bell operating company of which it is an affiliate." ACI satisfies this requirement, as none of ACI's employees and officers are either employees or officers of any AOC. Earley Aff., ¶¶ 18-28. And while neither the AOCs nor ACI have their own directors (id., ¶ 19), they are not required to by Section 272(b)(3). As this Commission determined:

> the section 272(b)(3) requirement that a BOC and a section 272 affiliate have separate officers, directors, and employees simply dictates that the same person may not simultaneously serve as an officer, director, or employee of both a BOC and its section 272 affiliate. Thus, as MFS asserts, an individual may not be on the payroll of both a BOC and a section 272 affiliate.

Non-Accounting Safeguards First Report and Order, ¶ 178 (emphasis added). Nowhere in its Order did the Commission state, or even imply, that Section 272(b)(3) requires BOCs and their

long distance affiliates to establish their own boards of directors; indeed, neither Sprint nor any other party argued in the Non-Accounting Safeguards proceeding that the provision imposed such a requirement. The reason, reflected in the above-quoted passage, is that Section 272(b)(3) is designed to guard against improper commingling between a BOC and its long distance affiliate, not to impose an affirmative obligation for each to form its own board of directors. And there is no improper commingling between Ameritech Michigan and ACI. (The reply affidavits of Messrs. Earley, La Schiazza and Shutter address the commenters' other Section 272 arguments.)

IV. AMERITECH'S APPLICATION IS CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY.

A. The Local Exchange Business in Michigan Is Open to Competition in Accordance with the Requirements of the 1996 Act.

1. Ameritech's competitors are advocating a "public interest" standard that is inconsistent with the open markets objective of the 1996 Act.

As the Commission recently noted, "Section 271(d)(3) approval for a particular state is generally designed to ensure that the BOC has taken sufficient steps to open its local exchange network in that state to competition."[31/] In its opening Brief (pp. 56-62, 71-73), Ameritech demonstrated that, consistent with the requirements of the 1996 Act, the local exchange business in Michigan is open to competition as a result of Ameritech's implementation of the competitive checklist, its compliance with the structural and non-structural provisions of the Act and related regulations, and the procompetitive actions of the Michigan authorities. Ameritech further demonstrated that, as a matter of fact, competitors are entering the local exchange business in

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31/ In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket No. 96-149, FCC 97-222, Second Order on Reconsideration (rel. June 24, 1997), ¶ 5 ("Non-Accounting Safeguards Second Order on Reconsideration").

Michigan at a rapid rate. See id., pp. 74-78.[32/]

In response, Ameritech's competitors mischaracterize the applicable "public interest" standard under the 1996 Act. AT&T and MCI, for example, assert that "effective competition" must emerge in Michigan before approval of any Ameritech application would be in the public interest. AT&T, p. 42; MCI, p. 37.[33/] In taking this position, Ameritech's opponents are seeking to resurrect various forms of the "metric" test for BOC entry into the long distance business, contending that BOC long distance entry is dependent on the existence of substantial actual competition in the local exchange business. Although Ameritech's competitors have asserted such "metric" tests for years, Congress expressly rejected them when considering and adopting the 1996 Act. See Ameritech Br., p. 63; Wilk/Fetter Aff., ¶¶ 5-9.

Remarkably, AT&T suggests that the DOJ supports its "effective competition" restriction on BOC entry into the long distance business. See AT&T, p. 42 n.24. In fact, the DOJ has made clear that BOC interLATA entry need not wait "until local competition has become fully effective." DOJ SBC Evaluation, p. 44. As the DOJ explained, "[a]lthough Congress required that local markets be open to competition before BOC long distance entry, some of the

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[32/] Although Ameritech's competitors attempt to disparage the current state of local competition in Michigan, at the end of the day, they cannot deny that local competition in Michigan not only exists but is growing. Indeed, as the reply affidavit of Professors Harris and Teece shows, contrary to the impression Ameritech's competitors attempt to create, local competition has dramatically increased even in the short period of time since Ameritech's Application was filed in mid-May. See Harris/Teece Reply Aff., ¶¶ 4-5.

[33/] MCI goes on to reject expressly the "open to competition" standard, asserting that "it is not sufficient that markets be merely 'open' to competition, or that certain identified barriers to entry have been eliminated." MCI, p. 38 (emphasis added). MCI's position is inexplicable. To support its merger with British Telecom, MCI took the position that, in light of the regulatory requirements to which BT is subject in the British market, the merger would not be anticompetitive. But those regulatory requirements are not nearly as pervasive as the resale discount and unbundling obligations imposed on Ameritech by the 1996 Act. It is therefore absurd for MCI to suggest in this proceeding that Ameritech's entry into long distance in Michigan is somehow anticompetitive.

provisions of the 1996 Act indicate that Congress envisioned a transitional period after entry before local competition became fully effective." Id., p. 44 n.53 (emphasis added).

Pursuant to Section 272's separate affiliate requirements and other provisions of the 1996 Act, the Commission has adopted elaborate regulations imposing both accounting and non-accounting safeguards. See Ameritech Br., pp. 55-62, 79-85. And the Commission has acknowledged that these regulations, like Section 272 itself, make sense only in the context of a transitional phase after BOC interLATA entry but "before local competition [becomes] fully effective":

> As explained in the Non-Accounting Safeguards First Report and Order, Congress recognized that section 271(d)(3) approval might be granted in a particular state before the local exchange market in that state became fully competitive. Congress thus enacted section 272 to respond to the concerns about anticompetitive discrimination and cost-shifting that arise when a BOC enters the interLATA services market in an in-region state in which the local exchange market is not yet fully competitive. As reflected in the title of section 272 ("Separate Affiliate; Safeguards"), Congress chose to respond to these concerns through the structural requirement of a separate affiliate.[34/]

Indeed, the entire regulatory structure of the 1996 Act, including Section 272, makes no sense if it is assumed that "effective local competition" is a prerequisite to BOC interLATA entry. A rational Congress obviously would not impose a pervasive regulatory scheme, including a separate subsidiary requirement, on a single participant in a fully competitive market. As the DOJ has observed, "[t]he protections of Section 272, which must be retained for at least three years after long distance entry, would have been unnecessary if Congress had wished to require fully competitive local markets as a precondition to long distance entry." DOJ SBC Evaluation, p. 44 n.53.

Finally, AT&T's attempt to use the DOJ's Schwartz affidavit to bolster its "effective competition" theory (AT&T, p. 43 n.24) is simply inexplicable. Professor Schwartz expressly

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34/ Non-Accounting Safeguards Second Order on Reconsideration, ¶ 5 (emphasis added).

repudiates the proposition that "effective local competition" should be a condition precedent to the approval of a BOC application for interLATA authority under Section 271. Under the heading "Fully Effective Local Competition Is Not a Prerequisite," Professor Schwartz states:

> Withholding BOC entry authority until there is sufficient local competition to eliminate a BOC's market power would not be appropriate on economic grounds. Even if barring the BOCs from long distance was justified at divestiture in order to promote the nascent long-distance competition, such competition could be protected today while allowing BOC entry well before there is effective local competition.

DOJ SBC Evaluation, Schwartz Aff., ¶ 150 (emphasis added).

2. The doubts expressed by the DOJ regarding whether the Michigan local exchange is open to competition are unfounded.

The DOJ agrees with Ameritech that the 1996 Act does not "requir[e] any specific level of local competition" as a pre-condition to BOC entry into long distance, and that the proper "public interest" standard for approval of this Application is whether the local exchange market in Michigan is open to competition. DOJ, pp. 29-31. But Ameritech emphatically rejects the DOJ's opinion that — notwithstanding Ameritech's "significant and important progress toward meeting the preconditions for in-region InterLATA entry under Section 271 in Michigan" — the local exchange in Michigan is not yet "fully and irreversibly open to competition." Id., pp. iv-v.

DOJ's opinion is based primarily on purported concerns relating to the degree of Ameritech's compliance with certain checklist items, including OSS, interconnection trunking, cost-based pricing, and unbundled local switching and local transport. Ameritech has responded above to each of the DOJ's concerns, and has demonstrated that those concerns are unfounded. And the MPSC — with which the Act requires this Commission to consult on the fact-intensive question of checklist compliance — has verified that Ameritech has made all checklist items

available to its competitors on terms and conditions and at prices that comply with the Act.[35/]

The only other basis for the DOJ's opinion that the local exchange in Michigan is not yet fully opened to competition is DOJ's apparent belief that Ameritech's performance measures and standards may not suffice to eliminate any risk of "backsliding" after its long distance Application is granted. The 1996 Act, however, authorized the state commissions to conduct arbitrations and approve the resulting interconnection agreements. As demonstrated above (and in Ameritech's initial Brief at 85), this process resulted in approved interconnection agreements that contain exacting performance measures, standards and reporting requirements for interconnection, access to network elements, resale and operational support systems. See Mickens Aff., passim. And these performance measures, standards and reporting requirements clearly enable Ameritech's competitors, as well as regulatory authorities, to monitor Ameritech's compliance with all of its obligations.

In sum, Ameritech has fully complied with all of the market-opening obligations imposed on it by Congress, this Commission, and the MPSC in the arbitration process. Given the fact that many competitors have actually entered the local exchange market in Michigan, this Commission should find as a matter of law that Ameritech's entry into long distance furthers the "open markets" objectives of the Telecommunications Act.

B. Ameritech Has No Ability to Successfully Discriminate Against Competitors Or Otherwise Impede Competition in the Provision of Local Or Long Distance Services.

Ameritech's opening Brief (pp. 78-92) demonstrated that any ability on the part of Ameritech to discriminate against its local or long distance competitors or otherwise impede competition in local or long distance services has been removed by the 1996 Act and the

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35/ The MPSC, of course, recognizes that there is a legal dispute regarding whether "unbundled local transport" includes "common transport," but expresses no doubt regarding Ameritech's ability to provide "common transport" if required to do so. MPSC, pp. 39-40.

Commission's implementing regulations, in tandem with Michigan law and regulatory oversight, the monitoring and reporting provisions in the interconnection agreements between Ameritech and its competitors, and technological constraints. As the Commission recently ruled in the BOC Non-Dominance Order (¶ 91), "The nondiscrimination and structural separation requirements set forth in section 272 and our rules thereunder, price cap regulation of the BOCS' exchange access services, and the Commission's affiliate transaction rules sufficiently reduce the risk of successful anticompetitive discrimination and improper allocation of costs." In response, Ameritech's competitors parade before the Commission the same array of "horribles" that they have been predicting for years would ensue from BOC long distance entry — as if Congress had not passed the 1996 Act, as if this Commission had not adopted any accounting and non-accounting safeguards, as if regulators were incapable of enforcing those safeguards, and as if telecommunications goliaths like AT&T and MCI would be helpless gnats in a competitive struggle with a BOC.[36/]

First, Ameritech's competitors contend (AT&T, p. 43, MCI, p. 41) that granting Ameritech's Application will create the wrong incentives, encouraging Ameritech to cease to cooperate with competitors in maintaining an open local exchange market in Michigan. The real issue here, however, is not incentives but ability. Congress designed the 1996 Act to provide a series of overlapping safeguards against any possibility that a BOC could abuse its position in the local exchange market after entering the long distance business. Ameritech is bound by its interconnection agreements, which meet each of the statutory checklist requirements (including nondiscrimination), which are and will continue to be closely monitored by the MPSC and Ameritech's competitors, and which provide for substantial penalties in case Ameritech's

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[36/] For a detailed rebuttal of the commenters' speculations about risks to competitors associated with Ameritech's entry into long distance, see the Gilbert/Panzar Reply Affidavit.

performance falls short. This is the "cooperation" that the 1996 Act requires, and approval of Ameritech's Section 271 Application will not reduce Ameritech's "cooperation" obligation in the slightest. See Gilbert/Panzer Reply Aff., ¶¶ 50-52. Moreover, this Commission may sanction Ameritech — and even revoke its right to provide in-region, interLATA services — "at any time" if Ameritech fails to meet "any of the conditions" of long distance entry. Section 271(d)(6).

Second, Ameritech's competitors argue (AT&T, pp. 41-44; MCI, pp. 43-44; Sprint, pp. 41-45) that granting its Application will enable Ameritech to cross-subsidize the competitive long distance services of its long distance affiliate with inflated revenues from its regulated local exchange business. This Commission already has rejected this argument, ruling that its accounting rules are consistent with the Act and will "prevent subsidization of competitive nonregulated services." Accounting Safeguards Report and Order, ¶ 275.

Third, Ameritech's competitors contend (AT&T, p. 43; MCI, p. 45) that approval of Ameritech's Application will have an anticompetitive effect in the market for integrated services. This contention is baseless. To begin with, where, as here, the local exchange market is open to competition, a BOC's ability to provide integrated services is procompetitive. As Professor Schwartz has pointed out, once the local exchange market has been opened to competition, BOC entry into long distance "has the potential to yield significant benefits in provision of integrated services," and any risks associated with BOC provision of those services "can be mitigated through regulatory, antitrust and other safeguards." DOJ SBC Evaluation, Schwartz Aff., ¶ 153. Beyond this, the major carriers' self-serving objection to Ameritech's provision of integrated services clashes with the "level playing field" objectives of the 1996 Act. Those carriers already are offering local service in Michigan and are rapidly expanding that service. See Harris/Teece Aff., pp. 53-60, 80-85; Harris Teece Reply Aff., ¶¶ 4-5. Even with

the joint marketing restrictions of Section 271(e)(1), they presently can sell both local and long distance and provide customers with a single bill — a benefit which is enormously attractive to consumers. See DOJ SBC Evaluation, Schwartz Aff, ¶ 59 ("it is widely believed that many consumers would value highly the simplicity and convenience of a single bill" and "a single customer representative"). Moreover, Ameritech will have a zero market share upon its entry into long distance, and be competing against at least one company (AT&T) that touts its belief that it has a significant brand-name advantage over the BOCs in their own regions.[37/]

Finally, commenters argue that federal and state regulatory authorities — even "assisted" by hyper-aggressive litigant/competitors — are incapable of enforcing the pervasive statutory and regulatory restrictions on Ameritech's post-entry behavior. (AT&T, p. 45; MCI, pp. 41-42; Sprint, p. 40). This contention is simply wrong. See Wilk/Fetter Aff., ¶¶ 43-50 (discussing effectiveness of regulatory prohibitions against cross-subsidization); Wilk/Fetter Reply Aff., ¶¶ 21-25 (discussing ability of regulators to cope with new technologies and legal standards). More fundamentally, nothing in the 1996 Act suggests that Congress deemed this Commission or state regulators incapable of enforcing the statutory, regulatory and contractual obligations imposed on a BOC offering in-region, interLATA services. The public interest will best be served — and the intent of Congress best be implemented — by allowing the regulatory authorities to perform their oversight responsibilities in the context of local exchange and long distance markets that are open to unrestricted competitive entry.

C. Ameritech's Application Is Consistent with the Public Interest Because it will Enable Ameritech to Confer Substantial Benefits on Consumers of Telecommunications Services in Michigan.

In its opening Brief (pp. 66-70), Ameritech demonstrated that its entry into long distance

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37/ See B. Warner, "AT&T Dials in its Gail Force Factor," Brandweek, p. 29 (May 26, 1997) (head of AT&T's consumer long distance business states that market research indicated that AT&T was "the carrier of choice in every single territory").

has the potential to create substantial benefits for Michigan consumers — increasing competition for long distance services, providing consumers with a wider range of choices in integrated services, and meeting the demand for additional competition in the provision of services to residential and small business customers.[38] Indeed, Professor Schwartz specifically endorses Ameritech's position that BOC entry into long distance will enhance competition for the provision of long distance services, "especially for residential and low-volume business customers," and will "make available the benefits of . . . integrated services to consumers in its service regions." DOJ SBC Evaluation, Schwartz Aff., ¶¶ 61, 86, 96. See also Harris/Teece Aff., pp. 98-99; Crandall/Waverman Aff., ¶ 116. And the self-serving assertions to the contrary by Ameritech's competitors are baseless.

For example, the major long distance carriers contend that Ameritech's entry into long distance would lead to no gain in common welfare, because there are already hundreds of aggressive resellers in the market. AT&T, pp. 46-47; MCI, p. 47. This contention is absurd. As Professor Schwartz has observed, "[i]t stretches credulity to argue . . . that a BOC has nothing uniquely positive to offer" — that "it is no different from the hundreds of existing resellers." DOJ SBC Evaluation, Schwartz Aff., ¶ 95. It is simply indisputable that Ameritech's "reputation and established billing and consumer service arrangements with local subscribers would enable it to market long-distance services more effectively than could other entrants." Id., ¶ 96.[39]

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[38] See, also, BOC Non-Dominance Order, ¶ 92 ("the entry of the BOC interLATA affiliates into the provision of interLATA services has the potential to increase price competition and lead to innovative new services and marketing efficiencies"); DOJ SBC Evaluation, p. 4 ("it is reasonable to conclude that additional entry, particularly by firms with the competitive assets of the BOCs, is likely to provide additional competitive benefits").

[39] AT&T also contends that Ameritech's entry would not produce any additional price competition because prices in the highly concentrated long distance market have long been at
(continued...)

Similarly, AT&T argues (p. 48) that, while it is true that the major IXCs have adopted "increases in basic rates" over the years in order to "avoid attracting low-volume, high-cost customers," there is no reason for the Commission to credit Ameritech's assertion (Ameritech Br. p. 69) that it "will bring the benefits of competition to a broader group of consumers," including "small business and residential customers." In fact, there are very good reasons to believe that Ameritech would fill the competitive void created by the IXCs' efforts to deprive residential and low-business customers of valuable telecommunications services. A BOC, such as Ameritech, would be a "powerful retailer of long distance services" to "residential and low-volume business customers," because (1) it has "advantages deriving from its powerful brand name and established customer links in its region" and (2) "billing and other 'fixed and common costs' of serving a customer are relatively large compared to the revenue from low-volume customers, and a BOC already incurs most of these costs in providing local service." DOJ SBC Evaluation, Schwartz Aff., ¶¶ 61, 96. See also United Homeowners Association, p. 2 ("Homeowners in Michigan should not have to wait any longer to realize the benefits of meaningful competition in the long distance market."); United Seniors Health Cooperative, p. 1 (same); National Association of Commissioners for Women, p. 1 ("Ameritech's entry into the long distance market will mean lower rates and better service for consumers in Michigan.")

[39/](...continued)
competitive levels. AT&T, pp. 46-47, 49. For a detailed refutation of the attempts by Ameritech's competitors to explain away the non-competitive performance of the long distance industry, see generally MacAvoy Reply Aff. (including Appendix A) and Crandall/Waverman Reply Aff. Moreover, AT&T's characterization of the IXCs' pricing practices as fully competitive during the years examined by Professor MacAvoy is belied by the lower flat-rate plans offered recently by the major long distance carriers — plans undoubtedly driven by concerns over the prospect of BOC competition. As Professor Schwartz has noted, those flat-rate plans "call into question previous claims [by the major long distance carriers] that the market was intensely competitive already." DOJ SBC Evaluation, Schwartz Aff., ¶ 94 n.33. See also MacAvoy Reply Aff., ¶ 17 (the most recent rate plans mean "prices for the last ten years have been non-competitive and could become so quickly once again").

In sum, Ameritech's entry into long distance "has the potential to yield significant benefits in provision of integrated services and increased long-distance competition." DOJ SBC Evaluation, Schwartz Aff., ¶ 153. And now that the local exchange market in Michigan has been opened to competition, any further delay in Ameritech entry would be contrary to the public interest because it would deprive Michigan consumers of those benefits.

V. CONCLUSION

For the foregoing reasons, Ameritech's Application to provide in-region, interLATA services in Michigan should be approved.

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